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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BEST CARPET VALUES, INC. and
THOMAS D. RUTLEDGE, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

CASE NO.: 5:20-cv-04700-EJD

**DEFENDANT GOOGLE LLC'S
ANSWER**

DEFENDANT’S ANSWER

To the extent the paragraphs (“Paragraphs”) of the Complaint (Dkt. No. 1) are grouped under headings and subheadings, Google responds generally that such headings and subheadings (some of which are repeated below for reference only and which do not constitute admissions) state legal conclusions and inferences to which no response is required. To the extent a response is necessary, Google denies each and every heading and subheading in the Complaint and incorporates by reference this response in each Paragraph below as if fully set forth herein.

Except as expressly admitted herein, Google denies any and all allegations as set forth in the Complaint. Google expressly reserves the right to amend and/or supplement its Answer as may be necessary. Google further answers the numbered Paragraphs in the Complaint as follows:

INTRODUCTION

1. Google lacks knowledge or information sufficient to form a belief about Plaintiffs’ alleged ownership of active U.S.-based websites. Google denies the remaining allegations in Paragraph 1.

2. Google denies the allegations in Paragraph 2.

3. Google denies the allegations in Paragraph 3.

4. Google denies the allegations in Paragraph 4.

5. Google denies the allegations in Paragraph 5.

6. Google denies the allegations in Paragraph 6.

7. Google admits that the Complaint purports to assert claims for (i) implied-in-law contract and (ii) trespass to chattels but denies that the Complaint alleges adequate factual or legal predicates for those claims. Google denies the remaining allegations in Paragraph 7.

8. Google admits that the Complaint purports to seek injunctive relief under the common law and California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, 17203, but Google denies that the Complaint alleges adequate factual or legal for those claims.

1 Google denies the remaining allegations in Paragraph 8.¹

2 **THE PARTIES**

3 9. Google lacks knowledge or information sufficient to form a belief about the truth of
4 the allegations concerning Plaintiffs Best Carpet Values, Inc. and Thomas D. Rutledge and their
5 websites, and therefore denies those allegations. Google denies the remaining allegations in
6 Paragraph 9.

7 10. Google admits the allegations in Paragraph 10.

8 **JURISDICTION AND VENUE**

9 11. Google admits the Court has subject matter jurisdiction of this matter. Google lacks
10 knowledge or information sufficient to form a belief about the remaining allegations in
11 Paragraph 11 and therefore denies those allegations.

12 12. Google admits that it resides in this District and that venue is proper pursuant to 28
13 U.S.C. § 1391. Google lacks knowledge or information sufficient to form a belief about the
14 remaining allegations in Paragraph 12 and therefore denies those allegations.

15 13. Google admits that the intradistrict assignment to the San Jose Division is proper.
16 Google lacks knowledge or information sufficient to form a belief about the remaining
17 allegations in Paragraph 13 and therefore denies those allegations.

18 **SUMMARY OF ALLEGATIONS**

19 14. Google denies the allegations in Paragraph 14.

20 15. Google denies the allegations in Paragraph 15.

21 16. Google admits that it developed the Android operating system and the Search App
22 software. Google denies the remaining allegations in Paragraph 16.

23 17. Google denies the allegations in Paragraph 17.

24 18. Google denies the allegations in Paragraph 18.

25 19. Google denies the allegations in Paragraph 19.

26 20. Google denies the allegations in Paragraph 20.

27 _____
28 ¹ Plaintiffs' cause of action under the "unfair" prong of California's Unfair Competition Law, Cal. Bus. & Prof.
Code §§ 17200, 17203 was dismissed by the Court without leave to amend. Dkt. No. 41.

1 21. Google denies the allegations in Paragraph 21.

2 22. Google denies the allegations in Paragraph 22.

3 23. Google denies the allegations in Paragraph 23.

4 24. Google denies the allegations in Paragraph 24.

5 25. Google denies the allegations in Paragraph 25.

6 26. Google denies the allegations in Paragraph 26.

7 **GENERAL FACTUAL ALLEGATIONS**

8 **A. The Internet**

9 27. Google admits that the internet is a global network of interconnected computers and
10 networks and there are many ways to access the internet, including through cable, wireless, and
11 fiber-optic technology. Google denies the remaining allegations in Paragraph 27.

12 28. Google admits that no one owns the internet. Google denies the remaining
13 allegations in Paragraph 28.

14 29. Google admits that companies including Google own physical infrastructure that
15 supports the internet. Google denies the remaining allegations in Paragraph 29.

16 30. Google admits that companies including Google manufacture and sell certain
17 devices that are connected to or facilitate the sharing of information over the internet. Google
18 denies the remaining allegations in Paragraph 30.

19 31. Google admits that Internet Service Providers enable connections to the internet.
20 Google denies the remaining allegations in Paragraph 31.

21 32. Google admits that it offers various software products, such as web browsers and
22 search engines, that enable users to search for websites and other information on the internet.
23 Google denies the remaining allegations in Paragraph 32.

24 33. Google denies the allegations in Paragraph 33.

25 **B. Websites and How They Work**

26 34. Google denies the allegations in Paragraph 34.

27 35. Google admits that many websites are associated with a “domain name” or a
28 Uniform Resource Locator (“URL”). Google denies the remaining allegations in Paragraph 35.

1 36. Google admits that websites can have a homepage and additional pages and that
2 copies of these pages can be loaded and viewed by users connected to the internet. Google denies
3 the remaining allegations in Paragraph 36.

4 37. Google denies the allegations in Paragraph 37.

5 38. Google admits that users can use search engines such as Google.com, Yahoo.com or
6 Bing.com to search for websites and content using search terms. Google further admits that,
7 following a search, the search engine may return a list of websites or content that may be related
8 to the user's search and include hyperlinks. Google denies the remaining allegations in
9 Paragraph 38.

10 39. Google admits that when a user's browser connects to the web server hosting the
11 website code, the browser may create a copy of the requested website's code and use the copied
12 code to create a copy of the website that is displayed on the user's personal computer or device
13 screen. Google denies the remaining allegations in Paragraph 39.

14 40. Google lacks knowledge or information sufficient to form a belief about the truth of
15 the allegations in Paragraph 40, and therefore denies the allegations.

16 41. Google lacks knowledge or information sufficient to form a belief about the truth of
17 the allegations in Paragraph 41, and therefore denies the allegations.

18 42. Google lacks knowledge or information sufficient to form a belief about the truth of
19 the allegations in Paragraph 42, and therefore denies the allegations.

20 43. Google lacks knowledge or information sufficient to form a belief about the truth of
21 the allegations in Paragraph 43, and therefore denies the allegations.

22 44. Google denies the allegations in Paragraph 44.

23 45. Google denies the allegations in Paragraph 45.

24 46. Google denies the allegations in Paragraph 46.

25 47. Google admits certain websites enable internet users to make purchases and transact
26 other business from their homes, offices, or mobile devices. Google denies the remaining
27 allegations in Paragraph 47.

28 48. Google lacks knowledge or information sufficient to form a belief about the truth of

1 the allegations in Paragraph 48, and therefore denies the allegations.

2 49. Google denies the allegations in Paragraph 49.

3 50. Google lacks knowledge or information sufficient to form a belief about the truth of
4 the allegation in the first two sentences in Paragraph 50, and therefore denies the allegations.
5 Google denies the remaining allegations in Paragraph 50.

6 51. Google admits that website owners may have First Amendment rights. Google
7 denies the remaining allegations in Paragraph 51.

8 52. Google denies the allegations in Paragraph 52.

9 53. Google admits that website owners may have property rights, free speech rights and
10 commercial interests. Google denies the remaining allegations in Paragraph 53.

11 **C. Google's Offending Search App**

12 54. Google admits the allegations in Paragraph 54.

13 55. Google denies the allegations in Paragraph 55.

14 56. Google admits it develops and offers the Android operating system. Google admits
15 the Android operating system allows connectivity to the internet. Google denies the remaining
16 allegations in Paragraph 56.

17 57. Google admits it owns Google Chrome and google.com. Google denies the
18 remaining allegations in Paragraph 57.

19 58. Google admits it operates Google Ads, Google AdSense, and Google AdX. Google
20 denies the remaining allegations in Paragraph 58.

21 59. Google admits that Android phone users can access the internet by using the
22 Chrome browser and entering search terms into Chrome's search bar or navigation bar. Google
23 denies the remaining allegations in Paragraph 59.

24 60. Google admits that Android phone users can access the internet by using Google's
25 Search App and entering search terms by typing or through voice commands. Google denies the
26 remaining allegations in Paragraph 60.

27 61. Google lacks knowledge or information sufficient to form a belief about the truth of
28 the allegations in Paragraph 61, and therefore denies the allegations.

1 62. Google lacks knowledge or information sufficient to form a belief about what
2 Plaintiffs mean by “virtually all Android phones,” and therefore denies the first sentence in
3 Paragraph 62. Google denies the remaining allegations in Paragraph 62.

4 63. Google denies the allegations in Paragraph 63.

5 64. Google denies the allegations in Paragraph 64.

6 **D. Google Updated its Search App to Superimpose its Free Ads on Websites**

7 65. Google admits that the Search App was included on Android OS devices during the
8 time period relevant to Plaintiffs’ complaint: March 2018 through April 2020. Google denies the
9 remaining allegations in Paragraph 65.

10 66. Google denies the allegations in Paragraph 66.

11 67. Google admits that the Search App search bar bears Google’s logo. Google lacks
12 knowledge or information sufficient to form a belief about the truth of the allegations in
13 Paragraph 67, and therefore denies the allegations.

14 68. Google admits that there are more than 50 million Android phone users in the
15 United States. Google lacks knowledge or information sufficient to form a belief about what
16 Plaintiffs mean by “virtually all of them” and the percentage of Android users who have used the
17 Search App’s search bar and therefore denies the remaining allegations in Paragraph 68.

18 69. Google admits the allegations in Paragraph 69.

19 70. Google admits that the search results contain hyperlinks and that users are taken to
20 different websites depending on which hyperlinks they click. Google denies the remaining
21 allegations in Paragraph 70.

22 71. Google denies the allegations in Paragraph 71.

23 72. Google denies the allegations in Paragraph 72.

24 73. Google denies the allegations in Paragraph 73.

25 74. Google denies the allegations in Paragraph 74.

26 75. Google denies the allegations in Paragraph 75.

27 76. Google denies the allegations in Paragraph 76.

28 77. Google denies the allegations in Paragraph 77.

1 78. Google denies the allegations in Paragraph 78.

2 79. Google denies the allegations in Paragraph 79.

3 80. Google denies the allegations in Paragraph 80

4 81. Google denies the allegations in Paragraph 81.

5 82. Google denies the allegations in Paragraph 82.

6 83. Google denies the allegations in Paragraph 83.

7 84. Google denies the allegations in Paragraph 84.

8 85. Google denies the allegations in Paragraph 85.

9 86. Google lacks knowledge or information sufficient to form a belief about the reasons
10 why website owners buy, build, and maintain their websites and therefore denies those
11 allegations in Paragraph 86. Google denies the remaining allegations in Paragraph 86.

12 87. Google lacks knowledge or information sufficient to form a belief about the reasons
13 why website owners publish and design their particular websites and therefore denies the
14 allegations in Paragraph 87.

15 88. Google denies the allegations in Paragraph 88.

16 89. Google denies the allegations in Paragraph 89.

17 90. Google denies the allegations in Paragraph 90.

18 91. Google lacks knowledge or information sufficient to form a belief about the truth of
19 the allegations concerning attorney advertising, and therefore denies the allegations. Google
20 denies the remaining allegations in Paragraph 91.

21 92. Google denies the allegations in Paragraph 92.

22 93. Google denies the allegations in Paragraph 93.

23 94. Google denies the allegations in Paragraph 94.

24 95. Google denies the allegations in Paragraph 95.

25 96. Google denies the allegations in Paragraph 96.

26 97. Google denies the allegations in Paragraph 97.

27 98. Google lacks knowledge or information sufficient to form a belief about what
28 Plaintiffs mean by “typically no longer displayed” and therefore denies the first sentence in

1 Paragraph 98. Google denies the remaining allegations in Paragraph 98.


2 99. Google lacks knowledge or information sufficient to form a belief about the truth of
3 the allegations in Paragraph 99, and therefore denies the allegations.

4 **E. Google Profited Directly from its Free Ads on the Class's Websites**

5 100. Google denies the allegations in Paragraph 100.

6 101. Google denies the allegations in Paragraph 101.

7 102. Google lacks knowledge or information sufficient to form a belief about the truth of
8 the allegations concerning the New Jersey allergist, and therefore denies those allegations.
9 Google denies the remaining allegations in Paragraph 102.

10 103. Google admits that certain paid results in search results can be identified with a
11 green  symbol. Google denies the remaining allegations in Paragraph 103.

12 104. Google denies the allegations in Paragraph 104.

13 105. Google denies the allegations in Paragraph 105.

14 106. Google denies the allegations in Paragraph 106.

15 107. Google lacks knowledge or information sufficient to form a belief about the truth of
16 the allegations concerning the example in Paragraph 107, and therefore denies those allegations.
17 Google denies the remaining allegations in Paragraph 107.

18 108. Google lacks knowledge or information sufficient to form a belief about the truth of
19 the allegations concerning the example in Paragraph 108, and therefore denies those allegations.
20 Google denies the remaining allegations in Paragraph 108.

21 109. Google lacks knowledge or information sufficient to form a belief about the truth of
22 the allegations concerning the example in Paragraph 109, and therefore denies those allegations.
23 Google denies the remaining allegations in Paragraph 109.

24 110. Google lacks knowledge or information sufficient to form a belief about the truth of
25 the allegations concerning the example in Paragraph 110, and therefore denies those allegations.
26 Google denies the remaining allegations in Paragraph 110.

27 111. Google lacks knowledge or information sufficient to form a belief about the truth of
28 the allegations concerning the example in Paragraph 111, and therefore denies those allegations.

1 Google denies the remaining allegations in Paragraph 111.

2 112. Google lacks knowledge or information sufficient to form a belief about the truth of
3 the allegations concerning the example in Paragraph 112, and therefore denies those allegations.

4 Google denies the remaining allegations in Paragraph 112.

5 113. Google lacks knowledge or information sufficient to form a belief about the truth of
6 the allegations concerning the example in Paragraph 113, and therefore denies those allegations.

7 Google denies the remaining allegations in Paragraph 113.

8 114. Google lacks knowledge or information sufficient to form a belief about the truth of
9 the allegations concerning the example in Paragraph 114, and therefore denies those allegations.

10 Google denies the remaining allegations in Paragraph 114.

11 115. Google denies the allegations in Paragraph 115.

12 116. Google denies the allegations in Paragraph 116.

13 **F. Tens of Millions of Android Users Saw Google's Unlawful Banner Ads**

14 117. Google admits that since 2018, the Search App is installed on new phones running
15 Android OS. Google further admits that the Search App has been installed on additional devices
16 through Android OS updates. Google denies the remaining allegations in Paragraph 117.

17 118. Google lacks knowledge or information sufficient to form a belief about the truth of
18 the allegations in Paragraph 118, and therefore denies the allegations.

19 119. Google admits there are more than 50 million Android phones in the world. Google
20 further admits that, between March 2018 and April 2020, Android users could use the Search
21 App to search for websites and other content on the internet. Google denies the remaining
22 allegations in Paragraph 119.

23 120. Google lacks knowledge or information sufficient to form a belief about the truth of
24 the allegations in Paragraph 120, and therefore denies the allegations.

25 **G. Google Would Have Paid Premium Prices for Its Banner Ads If Google Bought**
26 **Them in the Well-Developed Internet Advertising Market Instead Of Imposing**
27 **Them Without Consent Via The Search App**

28 121. Google lacks knowledge or information sufficient to form a belief about the truth of

1 the allegations in Paragraph 121, and therefore denies the allegations.

2 122. Google admits that in 2018 and 2019, it generated more than \$100 billion in
3 advertising revenue. Google denies the remaining allegations in Paragraph 122.

4 123. Google admits it operates one of the largest internet advertising networks. Google
5 also admits that certain website owners participate in Google's advertising programs to promote
6 their websites. Google denies the remaining allegations in Paragraph 123.

7 124. Google admits the allegations in Paragraph 124.

8 125. Google admits that its customers include website owners and advertisers. Google
9 denies the remaining allegations in Paragraph 125.

10 126. Google admits that it provides products and services relating to internet advertising.
11 Google denies the remaining allegations in Paragraph 126.

12 127. Google admits that display ads on the internet consist of various shapes and sizes.
13 Google lacks knowledge or information sufficient to form a belief about the truth of the
14 remaining allegations in Paragraph 127, and therefore denies the remaining allegations.

15 128. Google lacks knowledge or information sufficient to form a belief about the truth of
16 the allegations in Paragraph 128, and therefore denies the allegations.

17 129. Google lacks knowledge or information sufficient to form a belief about the truth of
18 the allegations in Paragraph 129, and therefore denies the allegations.

19 130. Google lacks knowledge or information sufficient to form a belief about the truth of
20 the allegations in Paragraph 130, and therefore denies the allegations.

21 131. Google lacks knowledge or information sufficient to form a belief about the truth of
22 the allegations in Paragraph 131, and therefore denies the allegations.

23 132. Google denies the allegations in Paragraph 132.

24 133. Google denies the allegations in Paragraph 133.

25 134. Google denies the allegations in Paragraph 134.

26 135. Google denies the allegations in Paragraph 135.

27 136. Google denies the allegations in Paragraph 136.

28 137. Google denies the allegations in Paragraph 137.

138. Google denies the allegations in Paragraph 138.

139. Google denies the allegations in Paragraph 139.

140. Google admits the allegations in Paragraph 140.

141. Google denies the allegations in Paragraph 141.

142. Google denies the allegations in Paragraph 142.

143. Google denies the allegations in Paragraph 143.

144. Google denies the allegations in Paragraph 144.

145. Google denies the allegations in Paragraph 145.

146. Google denies the allegations in Paragraph 146.

147. Google denies the allegations in Paragraph 147.

148. Google denies the allegations in Paragraph 148.

H. Google's Conduct was Manifestly Unjust

149. Google denies the allegations in Paragraph 149.

150. Google denies the allegations in Paragraph 150.

151. Google admits that it participates in the internet advertising market and has some familiarity with pricing for certain website ads. Google denies the remaining allegations in Paragraph 151.

152. Google denies the allegations in Paragraph 152.

153. Google denies the allegations in Paragraph 153.

154. Google denies the allegations in Paragraph 154.

CLASS ACTION ALLEGATIONS

155. Paragraph 155 is a legal conclusion to which no response is required. To the extent a response is required, Google denies that there are sufficient factual or legal predicates in the Complaint for class certification.

156. Paragraph 156 is a legal conclusion to which no response is required. To the extent a response is required, Google denies that there are sufficient factual or legal predicates in the Complaint for class certification.

157. Paragraph 157 is a legal conclusion to which no response is required. To the extent a

1 response is required, Google denies that there are sufficient factual or legal predicates in the
2 Complaint for class certification.

3 158. Paragraph 158 is a legal conclusion to which no response is required. To the extent a
4 response is required, Google denies that there are sufficient factual or legal predicates in the
5 Complaint for class certification.

6 159. Paragraph 159 is a legal conclusion to which no response is required. To the extent a
7 response is required, Defendants deny that there are sufficient factual or legal predicates in the
8 Complaint for class certification.

9 160. Paragraph 160 is a legal conclusion to which no response is required. To the extent a
10 response is required, Google denies that there are sufficient factual or legal predicates in the
11 Complaint for class certification.

12 161. Paragraph 161 is a legal conclusion to which no response is required. To the extent a
13 response is required, Google denies that there are sufficient factual or legal predicates in the
14 Complaint for class certification.

15 162. Paragraph 162 is a legal conclusion to which no response is required. To the extent a
16 response is required, Google denies that there are sufficient factual or legal predicates in the
17 Complaint for class certification.

18 163. Paragraph 163 is a legal conclusion to which no response is required. To the extent
19 a response is required, Google denies that there are sufficient factual or legal predicates in the
20 Complaint for class certification.

21 164. Paragraph 164 is a legal conclusion to which no response is required. To the extent a
22 response is required, Google denies that there are sufficient factual or legal predicates in the
23 Complaint for class certification.

24 165. Paragraph 165 is a legal conclusion to which no response is required. To the extent a
25 response is required, Google denies that there are sufficient factual or legal predicates in the
26 Complaint for class certification.

27 **CHOICE OF LAW**

28 166. Paragraph 166 sets forth legal contentions and legal conclusions to which no

1 response is required.

2 167. Google admits that its corporate headquarters are located in California. Google
3 denies the remaining allegations in Paragraph 167.

4 168. Google denies the allegations in Paragraph 168.

5 169. Google denies the allegations in Paragraph 169.

6 170. Google denies the allegations in Paragraph 170.

7 171. Paragraph 171 sets forth legal contentions and legal conclusions to which no
8 response is required.

9 172. Google denies the allegations in Paragraph 172.

10 173. Google denies the allegations in Paragraph 173.

11 174. Google denies the allegations in Paragraph 174.

12 175. Paragraph 175 sets forth legal contentions and legal conclusions to which no
13 response is required.

14 **FIRST CAUSE OF ACTION**

15 (Implied Contract/Unjust Enrichment)

16 176. Google reiterates its responses to the preceding paragraphs of this Answer to the
17 Complaint as if fully set forth herein.

18 177. Google admits Plaintiffs have asserted claims and purport to represent a class.
19 Google denies the remaining allegations in Paragraph 177.

20 178. Google denies the allegations in Paragraph 178.

21 179. Google denies the allegations in Paragraph 179.

22 180. Google denies the allegations in Paragraph 180.

23 181. Google denies the allegations in Paragraph 181.

24 182. Google denies the allegations in Paragraph 182.

25 **SECOND CAUSE OF ACTION**

26 (Trespass to Chattels)

27 183. Google reiterates its responses to the preceding paragraphs of this Answer to the
28 Complaint as if fully set forth herein.

1 184. Google admits Plaintiffs have asserted claims and purport to represent a class.
2 Google denies the remaining allegations in Paragraph 184.

3 185. Google denies the allegations in Paragraph 185.

4 186. Google denies the allegations in Paragraph 186.

5 187. Google denies the allegations in Paragraph 187.

6 188. Google denies the allegations in Paragraph 188.

7 189. Google denies the allegations in Paragraph 189.

8 190. Google denies the allegations in Paragraph 190.

9 **THIRD CAUSE OF ACTION**
10 (Cal. Bus. & Prof Code §§ 17200, 17203)

11 191. Google reiterates its responses to the preceding paragraphs of this Answer to the
12 Complaint as if fully set forth herein.

13 192. Google admits Plaintiffs have asserted claims and purport to represent a class.
14 Google denies the remaining allegations in Paragraph 192.

15 193. Paragraph 193 sets forth legal contentions and legal conclusions to which no
16 response is required.

17 194. Google denies the allegations in Paragraph 194.

18 195. Google denies the allegations in Paragraph 195.

19 196. Google denies the allegations in Paragraph 196.

20 197. Google denies the allegations in Paragraph 197.

21 198. Google denies the allegations in Paragraph 198.

22 **PRAYER FOR RELIEF**

23 1. Paragraph 1 is a legal conclusion to which no response is required. To the extent a
24 response is required, Google denies that there are sufficient factual or legal predicates in the
25 Complaint for class certification.

26 2. Paragraph 2 is a legal conclusion to which no response is required. To the extent a
27 response is required, Google denies that there are sufficient factual or legal predicates in the
28 Complaint for the relief requested in Paragraph 2.

1 3. Paragraph 3 is a legal conclusion to which no response is required. To the extent a
2 response is required, Google denies that there are sufficient factual or legal predicates in the
3 Complaint for the relief requested in Paragraph 3.

4 4. Paragraph 4 is a legal conclusion to which no response is required. To the extent a
5 response is required, Google denies that there are sufficient factual or legal predicates in the
6 Complaint for the relief requested in Paragraph 4.

7 5. Paragraph 5 is a legal conclusion to which no response is required. To the extent a
8 response is required, Google denies that there are sufficient factual or legal predicates in the
9 Complaint for the relief requested in Paragraph 5.

10 6. Paragraph 6 is a legal conclusion to which no response is required. To the extent a
11 response is required, Google denies that there are sufficient factual or legal predicates in the
12 Complaint for the relief requested in Paragraph 6.

13 7. Paragraph 7 is a legal conclusion to which no response is required. To the extent a
14 response is required, Google denies that there are sufficient factual or legal predicates in the
15 Complaint for the relief requested in Paragraph 7.

16 **AFFIRMATIVE DEFENSES**

17 Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Google asserts the
18 following affirmative defenses. Google does not concede that it bears the burden of proof or
19 persuasion on any of these defenses. Google reserves the right to assert additional defenses in the
20 event that discovery or further investigation demonstrates that any such defense is appropriate or
21 applicable.

22 **FIRST AFFIRMATIVE DEFENSE**

23 (Statute of Limitations)

24 Plaintiffs' causes of action, or causes of action of the putative class members, are barred
25 by the applicable statutes of limitations, including Cal Code. Civ. Proc. §§ 338(c)(1), 339 and
26 Cal. Bus. Prof. Code § 17208.

SECOND AFFIRMATIVE DEFENSE

(Copyright Preemption)

Plaintiffs' causes of action, or causes of action of the putative class members, are preempted by Section 301 of the Copyright Act (17 U.S.C. § 301).

THIRD AFFIRMATIVE DEFENSE

(First Amendment)

Plaintiffs' causes of action, or causes of action of the putative class members, are barred in whole or in part because Google's conduct is protected under the First Amendment.

FOURTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiffs' causes of action, or causes of action of the putative class members, are barred in whole or in part by the doctrine of implied or express license.

FIFTH AFFIRMATIVE DEFENSE

(Waiver/Estoppel)

Plaintiffs' causes of action, or causes of action of the putative class members, are barred in whole or in part by the doctrines of waiver and/or estoppel in that Plaintiffs and the putative class have accepted the benefits, including increased traffic to their websites, offered by Google, the Android system generally, and the search features in particular.

SIXTH AFFIRMATIVE DEFENSE

(Offset)

Plaintiffs' causes of action, or causes of action of the putative class members, are barred in whole or in part by the doctrines of offset in that Plaintiffs and the putative class have received benefits, including increased traffic to their websites, offered by Google, the Android system generally, and the search features in particular.

SEVENTH AFFIRMATIVE DEFENSE

(Unclear Hands)

Plaintiffs' causes of action, or causes of action of the putative class members, are barred in whole or in part by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

Plaintiffs' causes of action, or causes of action of the putative class members, are barred in whole or in part by the doctrine of good faith, in that Google's actions were taken in good faith.

NINTH AFFIRMATIVE DEFENSE

(Putative Class Members)

Google denies that this lawsuit is appropriate for class action treatment. Google may have numerous affirmative defenses and counterclaims against individual members of any alleged class, and accordingly Google reserves its right to assert those affirmative defenses and counterclaims in a timely fashion.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request the following relief:

1. A judgment in favor of Google denying Plaintiffs all relief requested in their Complaint in this action and dismissing Plaintiffs' Complaint with prejudice;
2. That Google be awarded its costs of suit, including reasonable attorney's fees; and
3. That the Court award Google such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Google demands a trial by jury on all issues so triable

Dated: November 8, 2021

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Victor Jih
Victor Jih

Attorneys for Defendant Google LLC